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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 MIAR K. GAINER,) Case No. EDCV 13-01566-GHK (KK)
12 Plaintiff,)
13 v.) ORDER TO SHOW CAUSE
14 TIMOTHY CROSS, et al.,)
15 Defendants.)
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18 On June 3, 2014, Plaintiff Miar K. Gainer (“Plaintiff”), proceeding *pro se* and
19 *in forma pauperis*, filed his Fourth Amended Complaint (“FAC”). ECF Docket
20 (“docket”) No. 26. The FAC was screened and the Court ordered service on the sole
21 defendant named in the FAC, Christian Dekker, on June 4, 2014. Docket Nos. 27-29.

22 On March 19, 2015, the Court received Process Receipt and Return Forms for
23 defendant Dekker who was served on March 12, 2015. Docket No. 35. Therefore, a
24 response to the FAC by defendant Dekker was due on or before April 2, 2015. See
25 Fed. R. Civ. P. 12(a)(1).

26 Defendant Dekker failed to respond by April 2, 2015. Thus, on May 22, 2015,
27 this Court issued an order for defendant Dekker to show cause as to why he failed to
28 file a responsive pleading. Docket No. 38. As of this date, defendant Dekker has

1 failed to file a response to the FAC, or the Court's May 22 2015 Order to Show Cause.

2 The failure of a party to defend against an action can be grounds for entry of
3 judgment against that party. Federal Rule of Civil Procedure 55 provides a "two-step
4 process for the entry of judgment against a party who fails to defend: first, the entry
5 of a default, and second, the entry of a default judgment." City of New York v.
6 Mickalis Pawn Shop, LLC, 645 F.3d 114, 128 (2d Cir. 2011) (internal quotation
7 marks omitted). "The first step, entry of a default, formalizes a judicial recognition
8 that a defendant has, through its failure to defend the action, admitted liability to the
9 plaintiff." Id. "The second step, entry of a default judgment, converts the defendant's
10 admission of liability into a final judgment that terminates the litigation and awards
11 the plaintiff any relief to which the court decides it is entitled, to the extent permitted
12 by Rule 54(c)." Id. A defendant's default *does not* automatically entitle the plaintiff
13 to a court-ordered judgment. See Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir.
14 1986). Rather, granting or denying relief is entirely within the court's discretion. See
15 id.

16 Entry of default—the first of these two steps—is governed by Rule 55(a), which
17 provides that "[w]hen a party against whom a judgment for affirmative relief is sought
18 has failed to plead or otherwise defend, *and that failure is shown by affidavit or*
19 *otherwise*, the clerk must enter the party's default." Fed. R. Civ. P. 55(a) (emphasis
20 added).

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1 Accordingly, on or before **June 30, 2015**, Plaintiff is ORDERED to show good
2 cause in writing, if any exists, why Plaintiff has not proceeded to seek an entry of
3 default in this action as to defendant Dekker, pursuant to Rule 55(a). Plaintiff is
4 forewarned that, if he fails to show cause, request entry of default, or otherwise
5 respond to this Court's Order, the Court will construe such unresponsiveness as
6 evidence of Plaintiff's lack of prosecution of this action, and that such lack of
7 prosecution will constitute a basis to dismiss this action in its entirety.

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9 DATED: June 9, 2015



KENLY KIYA KATO
United States Magistrate Judge